MISCELLANY.

BAR EXAMINATION.

Richmond, Virginia, November 15, 1907.

1. Give the steps necessary to be taken by a resident of this State to obtain a license to practice law? Also the steps to be taken by a foreign attorney to secure the privilege of practicing law in the courts of Virginia.

2. What constitutes the municipal law in force in this Commonwealth; from what source is it derived, and where is it found?

3. How many kinds of courts exercise jurisdiction in this State? Give generally the jurisdiction of each.

4. What is the right of Eminent Domain? How is it acquired? Give the necessary steps in a proceeding to condemn lands. What value or weight is attached to the report of commissioners to assess damages in a condemnation case, and the reason for the rule?

5. State the doctrine as to dedication of highways to the public, and as to the extent of right acquired by the public in the land upon the opening of a highway.

6. Enumerate the ex-contractu actions, and state what is the general issue in each and what may be proved thereunder.

7. Give a brief history of the action of ejectment, and state for what purpose the action is now used. What title must the plaintiff show? How is the action begun in Virginia; what pleas may the defendant file; what may be recovered; and what particularity is required in the verdict and judgment? What is the effect of an outstanding unsatisfied deed of trust given by the plaintiff?

8. How is the defense of set-off made, and what is the difference between a set-off and common law recoupment? If the set-off is barred by the statute of limitations, how do you take advantage of the fact? What are the essentials of a good plea under Va. Code, sec. 3299? A sues X for the price of a horse; X has an account against A for a bill of lumber equal to the price of the horse. What remedy has X (1) at common law, and (2) in Virginia?

9. What are the essential elements of a contract; and what is a good and what a valuable consideration? If a contract is in writing, how far, if at all, is parol evidence admissible to explain the intention of the parties, or to contradict or vary the terms of such contract?

10. What is direct and what is circumstantial evidence? What are the objections to hearsay evidence; and what is the difference between the degree of proof required in civil and criminal cases?

11. What charitable trusts are valid in Virginia?

12. What is a bill of discovery? Mention a few cases in which it is not allowed. Does such a bill require an answer under oath? What is the method of filing a bill of discovery against a corporation?

13. Can a libel which affects the property of the plaintiff be enjoined in equity? How in case it affects the personal character of the plaintiff?

14. A sells a tract of land, with the usual covenants of title, to B in April, 1907; nothing is said about taxes. In November B gets a notice that the taxes are due for the year 1907. Who is liable for the taxes, A or B, or both? Give reasons for your view.

15. State briefly the degrees of care owing by a railroad company to (1) a passenger; (2) a bare licensee; and (3) a trespasser. Distinguish by examples the degree of care due in each of the above cases.

16. X, who lives at a small country station, alights from a local train, and going in the direction of his home walks down a path by the side of the track, which is on the railroad right of way but is constantly, with the knowledge of the company, used by X and others. While walking along this path an express train rushes by and the steps to a passenger car fly off and strike X, killing him immediately. The evidence shows that the steps had become loose some fifty miles before reaching the scene of the accident, and that at the last preceding stop the conductor saw the steps, shook them, and tied them up with rope. There is a demurrer to the evidence. Would you overrule or sustain the demurrer? Give reasons for your view.

17. B, a man 75 years of age, goes upon a passenger train as escort to a lady. When he reaches the platform to leave the train it is in motion. Several witnesses testify that the train was moving very slowly, and that B could easily have alighted in safety. The brakeman, however, thinking that it was dangerous for him to alight, under the circumstances, seized him from behind and so unbalanced him that he fell from the car and sustained injuries from which he died. Is B's personal representative entitled to recover damages from the railroad company? Give reasons for your view.

18. A conveys his farm to B with general warranty of title; in this deed no mention is made of an existing right of way over the land for the benefit of C. The right of way was acquired by C in a recorded partition deed, which partition deed constitutes a link in the chain of title to the farm. B claims damages as an offset to his purchase money. Is he entitled to recover (1) where he had actual notice of the right of way; and (2) where he had constructive notice from the records? How if it was a public right of way?

19. Distinguish between a "trust" and a mere "charge" in the case of wills. Give example of each.

20. Wife leaves estate to trustee for support and maintenance of her husband, securing the same against his improvidence by stipulating that it shall not be liable for his past, present or future debts. Can this trust be maintained? Give reasons for your view.

21. Wife leaves property to a trustee in trust for her husband. The trustee is instructed to turn over to her husband such income as the trustee in his discretion might see fit. Wherein, if at all, does this trust differ from that stated in question 20?

22. A and B are co-sureties upon a note for $8,000 payable to C. A dies leaving an estate of $10,000 and debts amounting to $20,000. B, the co-surety, pays the $8,000 debt in full and asks to be subrogated to C's claim against A. Can this be allowed, and, if so, what recovery would B be entitled to?

23. A obtains a judgment against B on January 1, 1907, and it is recorded on July 1, 1907. C obtains judgment against B on April 1, 1907, and records it May 20, 1907. Who has priority as between A and C, and why?

24. How are contracts between a surviving partner and the representatives of his deceased partner with respect to the partnership estate regarded? How, when the transaction involves a purchase by the surviving partner of the interest of his deceased partner? Give reasons.

25. What is the effect of the transaction where one who is primarily bound for the payment of a note takes it up? What if the note be taken up by a stranger who is neither a party to the paper nor in any way bound for its payment? What title does the purchaser of past due negotiable paper from an agent for collection acquire?

26. What is the law in this State touching the right of a creditor to garnishee funds due his debtor from the Commonwealth or under its control? What is the law where the money is due from a municipal corporation to the debtor?

27. Discuss briefly the duty of a municipal corporation to maintain its streets in a safe and suitable condition. A street railway company secures from a city a charter in which it is stipulated that the railway company shall keep in repair that portion of its streets lying within the rails, and that the street railway company shall be liable for any injury resulting from a failure to keep such portion of the streets in proper condition. The company fails to repair the streets, which causes the track to become dangerous, and A while riding upon one of the cars of the company is seriously injured in consequence of the defective condition of the track and sues the city for failure to maintain its street in a reasonably safe condition. Can A recover from the city? Discuss briefly this subject.

28. A city in the course of street improvement orders a street to be cut down, which results in leaving the property of X ten feet above the level of the street. Formerly, X's property was a foot below the level of the street and it would have been an advantage to have it raised above the level; but it is a great disadvantage and damage for the property to be raised as much as ten feet above the street level. Under these facts, has X a right of recovery from the city? State reasons for your position.

29. State the nature of a joint tenancy, tenancy in common, and tenancy by entireties, respectively; and in what cases is survivorship between joint tenants still in force in Virginia?

30. A, having the following children: X, Y and Z, makes a will leaving his farm to X and Y jointly; X dies before the testator. What are the rights of Y and Z as to this farm?

31. An estate is devised to A in fee, but if A dies without heirs then to B in fee. What estate would B take at common law, and what estate would he take in Virginia?

32. At a judicial sale land is knocked out to A as the highest bidder. Before confirmation of the sale A sells his bid to B at an advance price of $500. The matter is brought to the attention of the court. Will the sale be confirmed? Give reasons for your view.

33. Doctrine as to usurious nature of a contract where A sells B his farm for $6,000, of which $3,000 is paid in cash, and balance in two years evidenced by bond bearing interest at eight per cent. per annum? Give reasons for your opinion.

34. When are the declarations of an agent or servant admissible as evidence against his principal or master; and when is an agent's knowledge of facts notice to his principal?

35. A has a well grounded fear that B intends to kill him, but there has been no overt act on the part of B indicative of such intention. Is A warranted, under such circumstances, in killing B by way of prevention?

36. Does the delivery of poison by one person to another, who refuses to administer it or to do any act in furtherance of the homicidal design of the person delivering it, constitute an attempt to administer poison within the meaning of sec. 3669 of the Va. Code?

37. If a person kills another without provocation and through reckless wickedness of heart, but at the time of doing so his condition from intoxication was such as to render him incapable of doing a willful, deliberate and premeditated act, of which degree of murder is he guilty? Give reasons.

38. If a person, who has formed a willful, deliberate and premeditated purpose to kill another, in pursuance of such design voluntarily makes himself drunk for the purpose of nerving himself for the deed, then meets the subject of his malice when he is so drunk as to be unable to deliberate and kills the person, of what degree of murder is he guilty? Give reasons.

39. Where three men went together to rob a store, and one was posted some distance therefrom to watch, the others entering the storehouse, killing the owner, and robbing the store, the first sharing the booty, of what degree of crime is the watcher guilty? Give reasons.

40. On the trial of an indictment for murder, the Commonwealth's attorney, after proving the affray during which the homicide was committed, attempted to introduce testimony tending to show that

the prisoner had conspired with another, on the morning of the homicide, to whip the deceased, and that an assault had been made and the deceased beaten by the prisoner about two hours earlier in the day than the time of the killing. Was this evidence admissible? Give reasons for your opinion.

List of Successful Applicants.

Thirty-three applicants for license to practice law in the State of Virginia appeared before Judge Harrison, of the supreme court of appeals, Friday, Nov. 15. In the class were seven negroes, and of these three succeeded in getting by with clean papers. Out of the total of thirty-three who faced the judge only seventeen passed, fourteen whites and three colored. Some of the applicants had not completed the course at the University of Virginia.

Following is a completed list of those who succeeded in passing the examination, which is said to have been the toughest in many years:

Beale, Richard L.	Hague, Va.
Bassette, Jr., A. W. E.	Hampton, Va.
Hanes, E. Ennis	Petersburg, Va.
Ferrall, E. T.	Richmond, Va.
Foushee, W. L.	Richmond, Va.
Garner, Henceford Noel	Alexandria, Va.
Hopwood, Albert C.	Roanoke, Va.
Massincup, Walter H.	Roanoke, Va.
McNeil, W. S.	Richmond, Va.
Purvis, Benjamin	Fredericksburg, Va.
Phillips, James T.	Ettricks, Va.
Selby, Tunis C.	Amburg, Va.
Winston, James H.	Norfolk, Va.
Wilson, Frederick R.	Grundy, Va.
Washington, Richard B.	Alexandria, Va.
Williams, A. Roy	Portsmouth, Va.
Walker, William R.	Charlottesville, Va.

Rights of a Finder of Lost Property.—There is an inveterate idea in the vulgar mind that "findings are keepings." Like other popular notions about law, this idea has a substratum of truth, but it would not be wise to act upon it without great caution. The subject is suggested by a case in the latest volume of the "Revised Reports"—Bridges *v.* Hawkesworth. A commercial traveller goes into a shop on business and picks up on the floor of the shop a bundle of banknotes which has been dropped there by a previous visitor to the shop. He hands the notes to the shopkeeper to try to find the true owner. Advertisements are issued, but the true owner is not forthcoming. The finder claims the notes: the shopkeeper sets up a rival claim. Which is right? Mr. Justice Patteson, delivering the judgment of the Court of Queen's Bench, held that it was the finder who was entitled to keep the notes. "The general right," said the learned judge, "of the finder to any article which has been lost as against all the world except the true owner has never been disputed since Armory *v.* Delamirie." The only question was whether the notes being picked up

inside the shop and not outside in the street made any difference, and the Court held it did not, for the notes were never "within the protection of his—the shopkeeper's—house;" in other words, the shop was for this purpose a public place. This distinction goes to the root of the matter, for if the locus in quo is a private and not a public place, the converse of the above rule is the true one, and the possessor of the land is entitled, as against the finder, to chattels found on the land. This was laid down in a subsequent case—The South Staffordshire Water Company *v.* Sharman (1896). There the finder, while cleaning out a pool of water, under the landowner's orders, came upon two gold rings and claimed to keep them, but Lord Russell of Killowen held that they belonged to the landowner, as having actual control of the locus in quo. As a general proposition, it may, therefore, be said that the possession of land carries with it by our law possession of everything which is attached to or under that land, and in the absence of a better title elsewhere the right to possess it also; and it makes no difference that the possessor is not aware of the thing's existence. This jus detinendi rests, as Sir F. Pollock points out, on a real de facto possession constituted by the occupier's general power and intent to exclude unauthorized persons. It has also a very practical justification. Any other rule, as Mr. Justice Wills remarked, would greatly tend to encourage dishonesty.—London Law Journal.

Is John Armstrong Chanler Sane or Insane.—Insane in New York, sane in Virginia, and a sort of mental chameleon in the eyes of the federal courts, is the anomalous condition of John Armstrong Chanler, man of wealth, and divorced husband of Amelia Rives, the writer. Adjudged insane and committed to a New York asylum, he escaped to Virginia and there was as formally adjudged of sound mind. He thereupon brought suit in the federal court to compel his New York guardian to restore his property, and applied for a restraining order to prevent the New York officials from committing him again to an asylum should he return to prosecute the suit. The order was denied. Query: What is he?—The Brief.

Uniform Divorce Laws.—The promptness with which New Jersey and Wisconsin have adopted the changes recommended by the National Divorce Congress will be gratifying to those who for many years had strongly recommended that such recommendations be made to the states, for the purpose of securing greater uniformity in divorce laws, and will surprise those who predicted that the legislatures of the various states would be slow in making any changes in their existing laws, from sheer stubbornness, and an inborn aversion to innovations of any kind. We are advised that in many other states these recommendations are receiving careful consideration, and we trust will be received as favorably as in these two states.

Trial by Jury.—Lord Loreburn has effectively shown that he does not sympathize with the recent attacks upon trial by jury. An application for a new trial, upon the ground that the verdict was against the weight of the evidence, gave him the opportunity of making some important observations in the Court of Appeal on Tuesday:

The Lord Chancellor said that when a verdict had been found by a jury the Court would not interfere unless it was satisfied that there had been a clear miscarriage of justice. There must be some finality in the trial, and, as had been frequently laid down, a new trial would not be granted merely because the judges differed from the conclusions arrived at by the jury. The jury, with all their advantages and disadvantages, were the tribunal appointed to determine the facts. Here there was no complaint made as to the direction of the judge to the jury, and the Court must refuse to set aside the verdict of the jury, as in his opinion there was ample evidence to support it.

This pronouncement is none the less interesting because Lord Loreburn himself was responsible for proposing an unrestricted right of appeal in criminal appeals, which, if it had not been abandoned before the Criminal Appeal Act was passed, would have seriously conflicted with his latest pronouncement as to the jury being "the tribunal appointed to determine the facts." It is singular that on the very next day after the delivery of the Lord Chancellor's observations the inclination to override the verdicts of juries should have found another manifestation in the case of Fachris *v.* Rustafjæll, where Mr. Justice Bray granted an unconditional stay of execution with a view to appeal on the ground that his view of the facts was "in direct conflict" with that of the jury. If this is not interfering with the province of juries, it comes uncommonly near it.—London Law Journal.

The Blue Laws of Virginia.—The popular idea that all the early "blue laws" of this country were in Connecticut, or in the New England plantations, is a great error. New York, Virginia, and even Maryland, (contrary to the claim that civil and religious liberty found a home in the last named colony from its earliest occupation) had laws as atrociously "blue" as any in Connecticut or Massachusetts. A law of New York, both before and after the English took possession, forbade any popish priest to abide in the colony, and prescribed that if any should return after banishment he should be put to death. Virginia forbade any such priest to remain in the province more than five days after notice, and subjected every "popish rescuant" to a heavy fine on conviction. Another Virginia law prescribed for blasphemy or "unlawful oaths," on the second offense, "to have a bodkin thrust through the tongue;" for the third offense, death.

"The corresponding law of Maryland was more specifically savage. For blasphemy, or denying the Trinity, "or the godhead of any of the three persons, or the unity of the godhead, or uttering any reproachful words concerning the holy trinity, or any of the three persons

thereof," the offender was punished, for the first offense, by "boring through the tongue" and a fine of £20; for the second offense, by "branding on the forehead with the letter B" and a fine of £40, or imprisonment for one year; for the third offense, death.

"In Virginia, (1662) it was ordained that in every county should be set up "a pillory, a pair of stocks and a whipping post, neere the court house, and a ducking stoole in such place as they shall think conveniente." In case of a judgment against a husband for slander uttered by his wife, "the woman shall be punished by ducking," and in case the judgment exceeded 500 pounds of tobacco, "then the woman to suffer a ducking for each 500 pounds adjudged against the husband, if he refuse to pay the tobacco."

"These are examples of the penal legislation of our ancestors only a little more than two hundred years ago. Read in the light of to-day, they suggest an unpleasant inquiry whether the enlightenment of our christian progenitors was greatly superior to the mental and moral darkness of their neighbors, the scalp-lifting pagans. The only consolatory reflection they invite is that, in the matter of "blue laws," the case of Roundheads and Cavaliers, Puritans and Churchmen, was "six of one and half a dozen of the other."

Bees Swarming on Neighbour's Land.—His Honour Judge Milligan, K. C., at a recent sitting at Attleborough County Court, gave judgment in the case of James Quantrill, of Thompson, labourer, *v.* William Spragge, of the same parish, labourer, who sought to recover £1 damages through loss of a flight of bees on May 25.

His Honour said: This action came before me at Watton in July, when the plaintiff claimed £1 damages for the loss of a swarm of bees. The facts proved were as follow: On May 25 last the plaintiff saw a swarm of bees leaving one of his hives, and alighting on the branch of an apple tree in the garden of the defendant, which was next to his. The plaintiff wished to go to the tree to try to take the bees, but the defendant would not allow him to enter his garden. There was a scuffle, but their wives intervened, and no one was hurt. In the end the defendant permitted the plaintiff (subject to his liability, if any, for trespass) to go into his garden to take the bees. In the meantime the defendant's son had, as agent of his father, been to the apple tree and had shaken the bees to the ground, where they remained in a cluster. As soon as the plaintiff came up to them to hive them they flew, as he said, right up to the sky. He admitted the bees would most likely have taken the same course if he had gone in the same unskilful way to the tree at first. In fact, he could not say that his chance of capturing the bees had been diminished by what had taken place. This being so, I held, on the facts, that the plaintiff had not proved appreciable damage. At the same time I held that the defendant was not entitled to costs, and I deferred until to-day giving my reasons for so holding, partly because the subject-

matter is one that from the remotest times has attracted general attention; and partly because the law, which is somewhat abstruse, is, according to the plaintiff, misunderstood by beekeepers, and seemed to require a more detailed statement than I could then give to it. As to the subject-matter, it has been said of bees that "no nation on earth has had so many historians." Their personally conducted tours in boats up and down the Nile were chronicled ages before pleasure yachting cruises for mere human beings were planned or organized. The study of the "birth and genius" of the bee has fascinated naturalists from Aristotle to Lord Avebury; while the commonwealth of bees has been praised by poets from Virgil to Shakespeare. The latter says:

> The honey-bees,
> Creatures that by a rule in nature teach
> The act of order to a peopled kingdom.
> They have a king and officers of sorts,
> Where some, like magistrates, correct at home;
> Others, like merchants, venture trade abroad;
> Others, like soldiers, armed in their stings,
> Make boot upon the summer's velvet buds,
> Which pillage they with merry march bring home,
> To the tent-royal of their emperor;
> Who, busied in his majesty, surveys
> The singing masons building roofs of gold;
> The civil citizens kneading up the honey;
> The poor mechanic porters crowding in
> Their heavy burdens at his narrow gate;
> The sad-ey'd justice, with his surly hum,
> Delivering o'er to executors pale,
> The lazy yawning drone.

Since Shakespeare wrote it has been ascertained that the chief ruler is not a king but a queen, and that the working bees are all females, not excluding the soldiers, who are "true Amazons."

As to the law, Blackstone says: "Our law apprehends the most obvious distinction to be between such animals as we generally see tame, and are therefore seldom, if ever, found wandering at large, which it calls domitæ naturæ, and such creatures as are usually found at liberty, which are therefore supposed to be more emphatically feræ naturæ, though it may happen that the latter shall be sometimes tamed and confined by the art and industry of man" (II. Bl. Com. 391). Bees belong to the latter class. They are a sort of wild animal, but a man who hives them has property in them.

Does that property cease to exist if your bees, while you are looking on, cross over into your neighbour's garden and settle before your eyes on his tree, or do you retain sufficient property in the bees to entitle you to maintain an action for injury to that property? The argument on the one side is that the owner of the soil is the owner of the tree and all that it contains, including the bees as animals feræ naturæ, and it has been suggested that a man may in his own grounds kill an escaped lion, and thus become owner of the skin—a trophy not

won by any sportsman in England since the "brave days of old." On the other side, it is said, the fact that a swarm of bees alights on a tree does not of itself give the owner of the soil any more property in them than he has in the birds which build their nests in the same tree.

In England the Courts have not, so far as I am aware, adjudicated upon these contentions. The case I referred to at the hearing was decided in Scotland. There the plaintiff followd his swarm of bees, and saw them alight on a chimney on land of the defendant. The plaintiff tried to skep them from the top of the chimney, no objection being taken to his going there. He failed, and went away. The same evening he returned with two experienced beekeepers to skep them at the bottom of the chimney, where they were then clustering. The defendant then told the plaintiff he had already had reasonable access, that a second swarm had entered the chimney, and could not be separated from the plaintiff's, and he refused to open his door or admit the plaintiff. The defendant afterwards himself hived and claimed the bees. The judge there held that the defendant was entitled to the bees, and said bees when they swarmed from a hive remained the property of the owner so long as he was pursuing them where he was entitled to go. If they went upon another person's lands that person was entitled to prevent pursuit on his ground, and if they were hived by that person they became his property. But he gave the defendant no costs (Harris *v.* Elder, 57 J. P. 553). In that case the bees were not in sight of the plaintiff; they were mixed with other bees, they were incapable of identification, and the plaintiff had had reasonable access. There were therefore ample grounds for the actual decision; but the principle stated by the judge seems to me to be unnecessarily wide, and might mislead unscruplous persons to attempt to appropriate the property of others in bees, Norwich Songsters, and other animals of the kind.

In America a different rule prevails. It is there said: "Bees remain the property of the person from whose hive they came, notwithstanding a temporary escape into a neighbour's garden. So long as the owner keeps them in sight and can identify them he retains his property in them, and during that time the right to capture them does not pass to the owner of the soil" ("Ingham on Animals," 139-159).

The opinion held in America is consistent with the maxim stated in the 12th edition of "Burn's Justice," vol. i., page 496 published in 1772. It is there written: "Bees and other creatures of a wild nature are not to be reckoned amongst stray goods. Nevertheless, it seemeth that a swarm of bees of which the owner hath lost sight, and consequently can make out no property, may be seized for the use of the King or the lord of the manor; for it is a maxim of the common law that such goods whereof no one can claim property do belong to the King."

It may be inferred from this that the owner of bees can make out

property in them against the King until he has lost sight of them. If so, the owner of the soil is not in a better position. Moreover, this view is more conducive to fair play. Hence I think in the present case the property in the bees remained in the plaintiff when they alighted on the defendant's tree, for the plaintiff had not lost sight of them, and could identify them. It is true he could not go and take them without being liable for damage (if any) for the trespass. But that did not justify the defendant. The shaking the bees from the tree was an unneighbourly act. I think that it was also illegal, and that if the bees had then flown to the sky instead of clustering on the ground, the defendant would have been liable for destroying the plaintiff's chance of taking his bees. It is analogous to cases where a man driving tame animals (cattle, for instance) trespassing on his land to a great distance, or hunts them off with a fierce dog, in which cases he is liable for the injury, if any, done to the property in the cattle. In the present case, as already mentioned, the wrongful act of the defendant caused no appreciable damage to the plaintiff. The plaintiff trespassed on the defendant's garden, and the defendant, by his illegal interference, trespassed on the plaintiff's property in the bees. It so happened that there was no damage to either party, and each will have to bear his own costs.

One other matter I should mention. The plaintiff urged that great hardship may arise if beekeepers have not a strict right to go upon other people's lands in pursuit of their bees. But I do not think any such hardship need be feared. There may be—perhaps in the order of Nature there must be—a crank, or a hater of bees, here and there, but in this country, with its unparalleled variety of soil, of vegetation, and of animal life, people are not in the least likely to refuse reasonable access or to be wanting in hospitality to those who exercise the attractive and profitable art and industry of keeping honey bees.

IN VACATION.

He Wanted to Marry Again.

SAMUEL RICE, Petitioner.
vs. In Chancery.
ANNIE RICE, Defendant.

To the Honorable H. A. Sharpe, Judge of the City Court of Birmingham, Alabama. In Equity.

Your Petitioner, Samuel Rice, of Mobile, Alabama, would differentially represent:

That on the 10th day of January, in the year of grace, 1891, your honor dissolved the connubial ties theretofore existing between petitioner and his consort, Annie Rice, granting her divorce a vinculo matrimonii, with beatifice privilege thereto annexed of marrying